

UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION
WASHINGTON, DC 20591

In the matter of the petition of

AVIATION SUPPLIERS ASSOCIATION

for an exemption from § 21.323 of
Title 14, Code of Federal Regulations

**Regulatory Docket No.
FAA-2005-21077**

GRANT OF EXEMPTION

By letter dated April 25, 2005, and supplemental information dated August 4, 2005, Mr. Jason Dickstein, General Counsel, Aviation Suppliers Association (ASA), 734 15th St NW, Suite 620, Washington, DC 20005, petitioned the Federal Aviation Administration (FAA) on behalf of ASA for an exemption from § 21.323 of Title 14, Code of Federal Regulations (14 CFR). The proposed exemption, if granted, would allow exporters of aviation products to apply for export airworthiness approvals for Class III products.

The petitioner requests relief from the following regulation:

Although ASA requested relief from § 21.323, we find ASA requires relief from § 21.323(b), which states the requirements for eligibility for export airworthiness approvals:

- (b) Any manufacturer may obtain an export airworthiness approval for a Class III product if the manufacturer—
 - (1) Has in his employ a designated representative of the Administrator who has been authorized to issue that approval; and
 - (2) Holds for that product—
 - (i) A production certificate;
 - (ii) An approved production inspection system;
 - (iii) An FAA Parts Manufacturer Approval (PMA); or

(iv) A Technical Standard Order authorization.

The petitioner supports its request with the following information:

ASA describes itself as an organization representing the aviation parts distribution industry. The organization supports efforts to improve the safety and quality of aircraft parts. It also promotes the commercial interests of its members.

ASA seeks an exemption allowing its members to apply for export airworthiness approvals for Class III products. According to the petitioner, the FAA will need to make “all necessary policy-level changes” with any grant of exemption. This would include some FAA policies that are part of bilateral aviation safety agreements (BASAs) with other countries. The FAA would also need to change certain policies that limit the activity of Designated Airworthiness Representatives (DARs).

According to the petitioner, the FAA interprets § 21.323 as prohibiting issuance of export airworthiness approvals for the export of Class III parts. ASA predicts the FAA will eventually propose relieving changes to this regulation. The proposed exemption would provide relief from § 21.323 until the FAA accomplishes those revisions. ASA asserts it does not agree with the FAA’s interpretation of § 21.323.

In its petition, ASA provides extensive comments about the public interest aspects of the petition. It also provides general comments about FAA policy on export of aviation parts.

ASA begins its comments about the public interest by stating an exemption is a necessary tool to resolve certain unfair economic conditions. Those conditions result in lost sales for U.S. parts distributors. FAA regulations impede international trade of aircraft parts, and the policy does not properly reflect today’s business environment. The original rule was designed to promote commerce, but was misinterpreted by the FAA. By blocking distributors from exporting Class III parts, current FAA policy disrupts the trade in aircraft parts, making it difficult for distributors to engage in international sales of those parts.

The petitioner asserts its proposal is also in the public interest because it improves safety by providing better documentation for parts airworthiness. The FAA has no specific regulation requiring “traceability” of aircraft parts as a status of that part. According to ASA, the FAA has asserted that documentation associated with aircraft parts promotes safety. ASA claims standardized documentation schemes are important because they strengthen maintenance quality systems. An exemption would also resolve some human factors issues associated with a lack of a common parts documentation system.

Safe documentation practices also promote safety on an international level. They improve the processes in which the United States engages in bilateral aviation agreements with other countries.

The proposal would not affect the standards applicable to the issuance of export airworthiness approvals. An exemption would not adversely affect safety because products exported by distributors would meet the same airworthiness requirements as products sold domestically. Applicants for an export airworthiness approval would still have to prove the same elements that are currently required for those approvals. Further, DARs make the same airworthiness determination regardless of whether a part is shipped to a domestic or international market.

ASA asserts European customers now require documentation for aircraft parts from the United States. European law requires parts imported from the United States meet certain documentation requirements. Export documentation is therefore no longer optional in European transactions.

ASA included comments on proposed amendments to the regulations related to export of Class III parts. It states amending the rule is consistent with the FAA's statutory and bilateral obligations. According to the petitioner, the United States Code directs the Secretary of Transportation to implement policies that remove restrictions for domestic and international air transportation. Many U.S. bilateral agreements now specify that the U.S. will provide 8130-3 tags for parts intended for export. Non-manufacturer exporters are not entitled to apply for such certificates because, previously, the 8130-3 tag was not necessary to export a part. ASA asserts that distributors have made good faith efforts to support the FAA's agreements, but the FAA has obstructed the process that allowed distributors to obtain (domestic) airworthiness approval for exported parts.

According to ASA, the existing policy penalizes distributors without cause. As currently written, § 21.323 places distributors at a disadvantage in the international market for aircraft parts. Until recently, however, FAA policies and the willingness of foreign airworthiness authorities to accept "domestic" 8130-3 tags have allowed distributors to sell parts. Recent revisions to FAA guidance have thwarted this compromise solution. Further, the policy penalizes U.S. companies that want to compete against foreign companies; § 21.323 precludes distributors from selling to customers in countries that require an export airworthiness approval tag. The FAA has committed resources to harmonize the FAA 8130-3 tag with its foreign counterparts, particularly the TC 24-0078 and the JAA Form One (predecessor to the EASA Form One). This has promoted better uniformity of documentation throughout the global market.

ASA describes how the proposed exemption would benefit society and the buyers of Class III parts. The public will benefit from the improvement in commerce of safe, airworthy aircraft parts sold at competitive prices. Cost savings and improvements to safety from better documentation and uniformity are added benefits. Documentation of

airworthiness (using the 8130-3 tags for aircraft parts) will improve aviation safety by providing a mechanism to record findings of airworthiness.

Increasing the number of entities that are eligible to apply for export airworthiness documentation will lead to increased competition in the U.S. and better economic efficiencies in the global marketplace. Presently, only manufacturers can obtain export airworthiness approval tags for Class III parts, giving them a monopoly for Class III parts sales to countries that require these tags. Other exporters would be able to compete with manufacturers if the FAA would allow exporters to apply for export airworthiness approval documentation. An exemption will help operators to control their maintenance costs and enable them to be in a position to pass those savings on to the traveling public. The aviation industry will benefit overall from more effective competition in the parts aftermarket, and promoting international sales of U.S. aeronautical products will strengthen the U.S. aviation industry.

ASA asserts its proposed exemption would impose no new burden on small businesses. An exemption would relieve the regulatory burden on distributors, most of which are considered small businesses. The current regulatory burden for those businesses is the inability to obtain the documentation that is now a precondition to export of aircraft parts to certain countries.

The exemption would impose no new recordkeeping or reporting burdens on affected entities. The requirement to obtain export airworthiness approval documents as a condition of export of aircraft parts to certain countries has already been established through existing bilateral agreements. The recordkeeping and reporting burdens associated with export airworthiness approvals are also already established.

Although DARs may see an increase in total numbers of export airworthiness approval applications from distributors seeking to obtain such documentation for Class III parts, they are generally paid on a per-document basis and therefore will also see a concurrent increase in revenue that compensates them for this increase.

Other potential solutions (such as amending BASA IPAs to remove specific references to 8130-3 tags) are unreasonably large tasks. Merely changing the BASAs might not alter practices of foreign governments that are prompted to request appropriate 8130-3 tags. Further, the FAA has already stated they cannot spare the resources to resolve this issue at a regulatory level.

A summary of the petition was published in the Federal Register on July 12, 2005, (70 FR 40100). No comments were received.

The FAA's analysis is as follows:

The petitioner, on behalf of the membership of the ASA, is seeking an exemption from the requirements of § 21.323. We find that ASA does not require a grant of exemption to § 21.323(a) since the petitioner, or any exporter, may obtain export airworthiness approvals for Class I and Class II products without any other qualifying requirements. Section 21.323(b) stipulates that applicants for an export airworthiness approval of Class III products must also be the holder of an FAA production approval (i.e., Production Certificate (PC), Approved Production Inspection System (APIS), Parts Manufacturer Approval (PMA), or Technical Standard Order Authorization (TSOA)) for the manufacture of such products. Further, those certificate holders must employ a representative of the FAA Administrator authorized to issue such approvals. Members of ASA are generally not holders of FAA production approvals and are therefore not eligible to apply for export airworthiness approvals for Class III products.

After a review and analysis of the petitioner's submitted information, including a list of ASA members accredited under the Voluntary Industry Distributor Accreditation Program, the FAA has concluded it could support a grant of exemption, if limited to § 21.323(b). We have determined this can be accomplished while assuring proper documentation and meeting an equivalent level of safety for exported Class III products.

The requirements defined in § 21.323(b) were originally established to relieve some of the burdens on the FAA associated with the increasing number of U.S. applicants for export activities. The FAA had envisioned this activity would be taking place predominately at FAA production approval holder facilities. This could be easily accommodated by using authorized FAA designees, particularly for Class III products. At the time, the FAA did not contemplate this activity would someday transition to a supplier/distributor-based network program.

Prior to export, an authorized FAA designee must certify that Class III products conform to their approved design and quality requirements and are in condition for safe operation. These design and quality requirements may be unique to a design approval held by the production approval holder, or defined in an acceptable government or industry specification, such as those commonly referenced for standard parts (i.e., AN, MS, NAS bolts, nuts, fasteners, etc.). The exporter must also comply with all applicable sections of Part 21, Subpart L, *Export Airworthiness Approvals*.

The FAA believes there would be no degradation in the level of safety if independent FAA authorized designees were allowed to issue export airworthiness approvals for exporters of Class III products subject to the conditions and limitations specified in this exemption.

The FAA's Decision

In consideration of the foregoing, I find that a partial grant of exemption is in the public interest. Therefore, pursuant to the authority contained in 49 U.S.C. §§ 40113 and 44701,

delegated to me by the Administrator, the Aviation Suppliers Association is granted an exemption from 14 CFR § 21.323(b) to the extent necessary to allow certain ASA members to apply for export airworthiness approvals for Class III products, subject to the following conditions and limitations.

Conditions and Limitations

1. This exemption is applicable to, and may only be exercised by, members of the Aviation Suppliers Association that are accredited through the Voluntary Industry Distributor Accreditation Program and listed in the ASA Database Registry for that program.
2. ASA must maintain a list of all members qualified to exercise the privileges of this exemption, and a record of all changes to that list. This list must be available to the public via the ASA website (www.aviationsuppliers.org) and must be provided to any interested party upon request.
3. ASA members exercising the privileges of this exemption must retain a copy of the exemption and make it available to any FAA Inspector or any representative of the FAA Administrator, upon request.
4. ASA members exercising the privileges of this exemption must comply with all regulatory requirements for the export of Class III products, as identified in 14 CFR Part 21, Subpart L, *Export Airworthiness Approvals*. This includes the requirement that all Class III products to be exported are manufactured and located in the U.S., unless otherwise exempted (reference: 14 CFR 21.325(b)(3)).

This exemption terminates on March 31, 2008, unless sooner superseded or rescinded.

Issued in Washington, DC, on March 23, 2006.

/s/ John J. Hickey
Director, Aircraft Certification Service